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2d Session.

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✓ P. 341. 57  
REPORT AND RESOLUTIONS

FROM A

COMMITTEE OF THE LEGISLATURE OF MASSACHUSETTS,

MAY 30 1838

*In relation to the northeastern boundary.*

MAY 10, 1838.

Laid on the table, and ordered to be printed.

*Report and resolves in relation to the northeastern boundary.*

COMMONWEALTH OF MASSACHUSETTS,  
*In Senate, February 7, 1838.*

*Ordered, That the Joint Committee on Public Lands be instructed to inquire what measures may be necessary in relation to the northeastern boundary.*

Sent down for concurrence.

CHAS. CALHOUN, *Clerk.*

HOUSE OF REPRESENTATIVES,  
*February 8, 1838.*

Concurred.

L. S. CUSHING, *Clerk.*

COMMONWEALTH OF MASSACHUSETTS,  
*In Senate, March 20, 1838.*

*The Joint Committee on Public Lands, to whom was committed an order of February 7, instructing them "to inquire what measures may be necessary in relation to the northeastern boundary," have considered the subject, and ask leave to submit the following report :*

The pecuniary interests of this Commonwealth, involved in the question of the northeastern boundary, calls loudly for the consideration of the subject by the Legislature. This interest is greater than is generally supposed; and the subject has not, of late, received that attention which its importance merits. The claim upon the General Government for militia services, which has engaged so much attention, and been regarded with so much interest, both by the people and the Legislature of this Commonwealth, is trifling compared with our interest in the disputed territory. There we have an interest of some six or eight hundred thousand dollars, one-third of which belongs to the State of Maine; but here we have an interest in our own right of two millions.

Blair & Rives, printers.

The disputed territory comprehends nearly seven millions of acres, the joint property of Massachusetts and Maine. It contains 10,705 square miles, being 2,905 square miles, or 1,859,200 acres, more than the entire territory of this Commonwealth. A committee of our own Legislature, who visited these lands in 1835, say of the Allagash country, which lies within the disputed territory, "there can be no doubt but that this is the best timbered tract in Maine, if not in the world." Again, they say, "this timber is indispensable in the finish and ornamental work of all our dwellings; and to this territory must nearly all the Atlantic towns and cities look for a supply. The rapid growth of these places, the improved taste in the construction of edifices of every description, the increasing ability to indulge this taste, the immense extent of country dependant for a supply almost exclusively on this region, afford the most conclusive evidence that the value must be immense."

Of these lands more than three millions of acres belong to this Commonwealth, and are worth, at the present time, at least fifty cents per acre, making an interest of more than one million and a half of dollars; but as these lands will increase in value as the settlement extends, it is highly probable that the Commonwealth, if left to the quiet enjoyment of her rightful possessions, will realize a much larger sum. While the people of this State have an interest of this magnitude in the question of the northeastern boundary, the committee believe that, as the guardians of the public weal, the Legislature ought to adopt all reasonable measures to assert the rights, secure the interest, and vindicate the honor of the Commonwealth.

The State of Maine is now alive to this subject. Her Legislature, in 1837, adopted spirited resolutions relative to this question of boundary, and her Executive, at the opening of the session of the present Legislature, has again called their attention to the subject. "It is certainly a remarkable fact," says Governor Kent, "that fifty-five years after the recognition of American independence by Great Britain, and the formal and precise demarkation of our limits in the treaty of peace, the extent of those limits, and the territory rightfully subject to our jurisdiction, should be a matter of dispute and difference. I feel it to be my duty, in this my first official act, to call your attention to that vitally important question, the true limits of our State, and to express to you and to the people my views of the claim set up by a foreign State to the rightful possession of a large part of our territory.

"The first duty of Maine, as it seems to me, is, to claim the immediate action of the General Government to move efficiently and decidedly, to bring the controversy to a conclusion. We have had years of negotiation, and we are told that we are apparently no nearer to a termination than at the commencement. Maine has waited with the most exemplary patience, till even her large stock is almost exhausted. She has no disposition to embarrass the action of the General Government; but she asks that some action be had, some movement made with a determinate purpose to end the controversy. She cannot quietly submit to have her territory wrested from her, her citizens imprisoned, her territorial jurisdiction annihilated, and her rights lost by the bold and persevering and unopposed claims of a foreign power. She cannot consent to be left alone in the controversy, or to be left in doubt as to the aid or countenance she may receive from the authorities of the Union, in maintaining her acknowledged rights.

"She asks the quiet and undisturbed possession of her territory, accord-

ing to the treaty, and that foreign and intrusive possession be put an end to; and by this claim she will abide. She will do nothing rashly, and indulge in no spirit of nullification; and it will not be until all hope of settling the vexed question by negotiation, and all requests for other aid are denied or neglected, that she will throw herself entirely upon her own resources, and maintain, unaided and alone, her just rights in the determined spirit of injured freemen. But those rights must be vindicated and maintained; and if all appeals for aid and protection are in vain, and her constitutional rights are disregarded, forbearance may cease to be a virtue; and, in the language of the lamented Lincoln, Maine may 'be compelled to deliberate on an alternative which will test the strictness of her principles, and the firmness of her temper.'"

Such is the language of the Chief Magistrate of that injured State; and it shows that the spell which for a period bound them in silence has been broken. Maine is now alive to this subject; she intends that her voice shall be heard. And why should not Massachusetts speak out? We have a pecuniary interest in this question, as great as our first-born. We are joint heirs with our offspring in this heritage; and not only self-interest, but parental solicitude should prompt us to action, and induce us to urge this subject upon the consideration of the Federal Government. To them belongs the right of adjusting this difficulty. And they owe it to their own character, to the honor of the nation, and the interests of two independent States, over which they bear rule, and whose rightful guardians in this respect they are, to press this subject upon the consideration of Great Britain.

But if the General Government will remain silent, or, by repeated concessions, will strengthen the claims of a foreign Government, it becomes Massachusetts so far to take this subject into her own hands, as to proclaim the grievances of an injured people in the ears of the nation. This Legislature owe it to themselves, to the honor of the Commonwealth, and to the interest of their constituents, to call public attention to the merits of this controversy. Entertaining these views, the committee will endeavor to spread before the Legislature the facts in relation to this controversy, that they may be able to decide upon the merits of our claim.

That this controverted question may be the better understood by the Legislature, two *official* maps are appended to this report. The first is known by the name of Mitchell's map, and is allowed by both Governments to have been before the commissioners of the two nations, at their public interviews during the pendency of the treaty of 1783. It represents the topography of the country, as it was understood by the high contracting parties at that time. The second is designated map A, and contains a just delineation of the water courses, and of the boundary lines as they are now contended for by the two nations. These maps differ in several respects from each other; but they are both official documents, agreed upon by the convention of September, 1827, and accredited by the respective parties; the latter as containing a delineation of the actual topography of the country, and the former of the topography as it was understood by the framers of the treaty of 1783.

It will be seen by map A, which is submitted as a part of this report, that the line, as described by the treaty and claimed by the United States, extends north from the monument at the source of the St. Croix, across the St. John's to the highlands, near the forty-eighth degree north latitude, and

thence along those highlands to the head of Connecticut river; and that the line as claimed by Great Britain commences at the same monument, and runs north to an isolated mountain, called Mars Hill, south of the St. John's, and thence westerly between the sources of the waters which flow into that river on the north, and the Penobscot on the south, till it unites with the line claimed by the United States, a little north of the forty-sixth degree of north latitude. There is also a difference in the two lines in relation to the northwest head of Connecticut river, which will be seen on map A, near the forty-fifth degree of north latitude. This map will also show the line recommended by the King of the Netherlands.

Having exhibited the lines as contended for by the two Governments, the committee will now attempt to show the justice and strength of our claim. This controversy must turn upon the location of the following points described in the treaty: *The northwest angle of Nova Scotia, the highlands, and the northwesternmost head of Connecticut river.* The committee will also state in advance, that the province now known by the name of New Brunswick was formerly included in Nova Scotia, and consequently all the ancient documents which speak of Nova Scotia apply to the present province of New Brunswick, as well as to that portion of the original territory which still bears the name of Nova Scotia.

With these preliminary statements, the committee will call the attention of the Legislature to the facts in the case.

The treaty of 1763 fixes the boundary between the United States and Great Britain. It commences its description of the boundary at the "northwest angle of Nova Scotia," and declares that the line extends "along the highlands which divide those rivers that empty themselves into the St. Lawrence, from those that fall into the Atlantic ocean, to the northwesternmost head of Connecticut river." After pursuing this description, and giving the boundary of the United States on the north, west, and south, the treaty contains these words: "East by a line to be drawn along the middle of the river St. Croix, from its mouth in the Bay of Fundy to its source, and from its source directly north to the aforesaid highlands, which divide the rivers that fall into the Atlantic ocean from those that fall into the St. Lawrence."

This presents the general outline of the boundary. But in order to a correct understanding of the subject, it is important to inquire whether the metes and bounds described in the treaty were understood at the time the treaty was made. It is a fact, authenticated by the commissioners who signed the treaty, that they had before them, during the negotiation, the map known by the name of Mitchell's map. The depositions of President Adams and Governor Jay, together with a letter of Dr. Franklin, state expressly that the commissioners at their public conferences had this map before them, and it was referred to when describing the boundary in question. This map, or an extract therefrom, is herewith submitted, and has delineated upon it the rivers that flow into the St. Lawrence, and a ridge of highlands commencing at the north of the Bay of Chaleurs, and running westerly, dividing the rivers before mentioned from those that fall into the sea through the St. John's.

But there is a great variety of other evidence which goes to explain this boundary, and to show that the description contained in the treaty was well understood by Great Britain at the time the treaty was ratified. As early as 1603, Henry IV., of France, granted to De Monts all the country in

North America between the fortieth and forty-sixth degrees of north latitude, by the name of Acadie. De Monts and his followers commenced a settlement on this grant, but were dislodged by the British in 1613. In 1621, James I., of England, granted to Sir William Alexander all the lands of the continent now known by the names of Nova Scotia, New Brunswick, and a part of Lower Canada. The western boundary of this grant is described as commencing at Cape Sable, crossing the Bay of Fundy "to the river Holy Cross or St. Croix, and to the furthest source or spring upon the western branch of the same; thence, by an imaginary direct line, to be drawn or run through the country, or over the land to the north, to the first bay, river, or spring emptying itself into the great river of Canada; and from thence, running to the east along the shores of the said river of Canada."

The territory included in this grant was bounded on the west by the St. Croix, and a line drawn north from its source to the great river of Canada or the St. Lawrence. Nova Scotia, for this was the name given to the grant to Sir William, was bounded on the north by the St. Lawrence; and this boundary continued until 1763. From 1621 to 1763, Nova Scotia or Acadie was alternately possessed by England and France, and knew no other northern boundary than the St. Lawrence.

In 1691, by the charter of William and Mary, the real province of Massachusetts Bay was created, consisting of the former provinces of Massachusetts Bay, New Plymouth, Nova Scotia, District of Maine, and all the land to the great river of Canada or the St. Lawrence. Massachusetts exercised some jurisdiction over Nova Scotia, appointed some civil and other officers, but owing to the extent of her territory and other causes, she, in a few years, gave it up, and the British Government made it a separate province.

We have already said that from the grant in 1621 to 1763, Nova Scotia was bounded north by the St. Lawrence. Though this province had been the subject of grants, of conquests, and cessions, the British Government always recognised this river as the northern boundary, never extending their claim beyond, and never stopping short of it. In 1763, by the treaty of Paris, France ceded both Nova Scotia and Canada to Great Britain in full sovereignty.

When both of these provinces became the property of Great Britain, she thought proper to erect the northern part of Nova Scotia and a part of Canada into a separate Government by the name of Quebec. The King by his proclamation bearing date October 7, 1763, established this Government, and bounded it as follows: "On the Labrador coast by the river St. John, and from thence by a line drawn from the head of that river, through Lake St. John, to the south end of Lake Nipissim, from whence the said line crossing the river St. Lawrence, and the Lake Champlain in forty-five degrees of north latitude, *passing along the highlands which divide the rivers that empty themselves into the said river St. Lawrence from those which fall into the sea, and also along the north coast of the Bay des Chaleurs, and the coast of the Gulf of St. Lawrence to Cape Rosiers*, and from thence crossing the mouth of the river St. Lawrence, by the west end of the island Anticosti, terminates at the aforesaid river St. John."\*

From this description we may easily learn the southern boundary of Quebec, the only boundary which relates to the question before us. On

\* This river falls into the Gulf of St. Lawrence, and must not be confounded with one of the same name which falls into the sea through the Bay of Fundy.

leaving the forty-fifth degree of latitude it passes along—not the highlands generally, but the highlands specially, "*the highlands which divide the rivers that empty themselves into the St. Lawrence, from those that fall into the sea.*" Here we have a definition of the highlands: they are the highlands which divide the rivers which run in opposite directions, into the St. Lawrence on the one side, and the sea on the other. But this is not all: this line, or rather its location, is further described; it passes *along the north coast of the Bay of Chaleurs*. By a recurrence to the subjoined maps, it will be seen that such a line must run north of the forty-eighth degree of north latitude. Prior to the erection of the Government of Quebec, Nova Scotia extended north to the river St. Lawrence; but the proclamation varied this boundary, by transferring it from the river to the source of the streams that flow into it; leaving the Metis, the Rimousky, the Green, and several other rivers on the north, and the waters of the Androscoggin, the Kennebec, the Penobscot, the St. John's, and the Ristigonche on the south.

The boundary, thus established in creating the province of Quebec has often been recognised by the acts of the Crown and the Parliament. In 1763, Montague Wilmot was appointed Governor of Nova Scotia, with a commission describing his territory as follows: "Bounded on the westward by a line drawn from Cape Sable across the entrance of the Bay of Fundy to the *mouth of the river St. Croix, by the said river to its source, and by a line drawn north from thence to the southern boundary of our colony of Quebec; to the northward by said boundary, as far as the western extremity of the Bay des Chaleurs, &c.*" In the commission to William Campbell, in 1767, and in the commission to Francis Leggee, in 1771, the same boundary is recognised, and described in the same language.

This boundary which had been established and recognised by the Crown, was recognised and confirmed by an act of Parliament in the 14th of the reign of George III., (1774.) That act which relates to the province of Quebec, describes it as containing "all the territories, islands, and countries in North America belonging to the Crown of Great Britain, *bounded on the south by a line from the Bay of Chaleurs, along the highlands which divide the rivers which empty themselves into the St. Lawrence, from those which fall into the sea.*"

This was the established line of boundary at the time of the treaty of 1783. The southern boundary of Quebec and the northern boundary of Nova Scotia pursued the same line, and passed from the northern coast of the Bay of Chaleurs, westerly along the highlands which divide the waters of the St. Lawrence from those of the Ristigonche and St. John. With these facts, and Mitchell's map before them, the treaty of 1783, acknowledging our independence, was signed and ratified. That treaty, in its first article, acknowledges the independence of New Hampshire, Massachusetts, and the other American States. This of itself would decide the boundary; for the northern boundary of Massachusetts and New Hampshire was the southern boundary of Quebec. But this article goes further, and provides, that, to prevent "all disputes, which might arise in future, on the subject of the boundaries of the said United States, it is hereby agreed and declared, that the following are and shall be their boundaries, to wit:"

Article 2. "*From the northwest angle of Nova Scotia, to wit: that angle which is formed by a line drawn due north from the source of the St. Croix river, to the highlands which divide those rivers that empty them-*

not the highlands which divide the waters of those that fall into the Bay of Fundy, into the directions, into the Bay of Fundy. But this is not all: the source of the river St. Lawrence, along the northwesternmost head of Connecticut river; thence down along the middle of that river to the forty-fifth degree of north latitude; &c. "East by a line to be drawn along the middle of the river St. Croix, from its mouth in the Bay of Fundy, to its source, and from its source directly north to the aforesaid highlands which divide the rivers that fall into the Atlantic ocean from those which fall into the river St. Lawrence."

Such is the language of the treaty, and it seems to your committee that no description can be plainer. The description begins at the "northwest angle of Nova Scotia," and it explains and fixes this point with the greatest accuracy of which the case admits. "From the northwest angle of Nova Scotia, to wit: that angle which is formed by a line drawn due north from the source of the river St. Croix, to the highlands." What angle is here intended? Why, an angle formed by a line due north from the St. Croix intersecting a line along the highlands. This line along the highlands must run nearly east and west; it commences north of the Bay of Chaleurs, and passes along near the forty-eighth degree of north latitude, intersecting the line drawn due north from the St. Croix, and continuing westerly along the highlands. And that there should be no mistake concerning these highlands, they are expressly declared to be highlands which divide the rivers that flow into the St. Lawrence from those which empty themselves into the sea, or Atlantic ocean.

This description was well understood at the time. The British commissioners and the British Government must have been aware of its location; they knew the southern boundary of Quebec; they knew the northern boundary of Nova Scotia. And this description of the boundary is introduced to make *all things certain*; the declaration in the treaty is this: "And that all disputes which might arise in future on the subject of the boundaries of the said United States may be prevented, it is hereby agreed and declared, that the following are and shall be their boundaries." Then follows the description already given.

Now how is this treaty to be interpreted? Vattel says, "The first general maxim of interpretation is, that it is not permitted to interpret what has no need of interpretation. When an act is conceived in clear and precise terms, when the sense is manifest, and leads to nothing absurd, there can be no reason to refuse the sense which this treaty naturally presents. To go elsewhere in search of conjectures, in order to restrain or extinguish it, is to endeavor to elude it. If this dangerous method be once admitted, there is no act which it will not render useless. Let the brightest light shine on all the parts of the piece; let it be expressed in terms the most clear and determinate—all this shall be of no use, if it be allowed to search for foreign reasons in order to maintain what cannot be found in the sense it naturally presents."

Now, can any reasonable doubt arise as to the meaning of the treaty? Is not the boundary line fixed with as much certainty as the nature of the case will allow? We say it is. We pronounce this sentence with confidence, because it is borne out by the treaty itself. We pronounce it with confidence, because the British Government understood its locality. We pronounce it with confidence, because Great Britain herself acknowledged the very line for which we contend to be the true boundary for the space of forty years.

There is almost an endless mass of documentary evidence all going to confirm our claim. Gallatin and Preble, in their statement submitted to

the King of the Netherlands, give us the titles of nineteen maps, eighteen of which were published in London and one in Dublin, between the years 1763 and 1781, and though these maps differ in some non-essential points, the commissioners say, "But in every instance, the course of the line from the source of the river St. Croix is northward; in every instance that line crosses the river St. John, and terminates at the highlands in which the rivers that fall into the river St. Lawrence have their sources; in every instance the north-west angle of Nova Scotia is laid down on those highlands, and where the north line terminates; in every instance the highlands, from that point to the Connecticut river, divide the waters that fall into the St. Lawrence, from the tributary streams of the river St. John, and from the other rivers that fall into the Atlantic ocean."

The maps were all published after the Government of Quebec was created, and before the treaty of 1783 was signed. And is it possible that their commissioners who signed the treaty, or the British Government, who ratified it, were ignorant of these maps? But if that were the case, no one can pretend that they were ignorant of maps which were published in London in the interval between the signing of the provisional articles in 1782, and the concluding of the definitive treaty in 1783.

The American commissioners above quoted say, "during the interval that elapsed between the signing of the preliminaries and of the definitive treaty, four maps of the United States were published in London, one of which, at least, appears to have been intended as illustrative of the debates in Parliament on the subject of the boundaries. These maps are an evidence of the contemporaneous understanding of the boundaries of the United States, according to the preliminaries. In all of them, those boundaries are laid down as now claimed by the United States, and are the same with those delineated in the preceding maps, as the boundaries of the provinces of Quebec and Nova Scotia. Seven other maps of the same character, published during the same and the ensuing year, afford additional proof of that understanding; and evidence is not wanting that it continued to prevail in England for many subsequent years."

We have already seen that all the official acts of the British Government, from the erection of the colony of Quebec to the treaty of 1783, recognised the very line for which we contend. This shows that the line of boundary was well understood at the time of making the treaty, and the subsequent acts of that Government prove, most conclusively, that this was the case. In 1784, the year next succeeding the treaty in question, Thomas Carleton was appointed Governor of New Brunswick. In his commission, the boundary of his colony is described as follows: "*Bounded on the westward by the mouth of the river St. Croix, by the river, to its source, and by a line drawn due north, from thence to the southern boundary of our province of Quebec, to the northward by the said boundary as far as the western extremity of the Bay des Chaleurs, to the eastward by the said bay and the Gulf of St. Lawrence.*"

Here is the same boundary recognised that was well known before the treaty, and it goes to confirm us in the opinion we have already expressed. If contemporaneous construction could ever decide the meaning of an instrument, the question before us is settled by the commission granted the year succeeding the ratification of the treaty. But this contemporaneous construction does not depend upon a single act. The commission above quoted gives the north and west boundary of New Brunswick; two years subsequently, viz: in 1786, Sir Guy Carleton was appointed Gover-

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nor of Quebec, with a commission giving the southern boundary of that province as follows: "*Bounded on the south by a line from the Bay of Chaleurs, along the highlands which divide the rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic ocean to the northwesternmost head of Connecticut river.*"

In 1807, James Henry Craig, in 1811, Sir George Prevost, in 1816, Sir John Coape Sherbrooke, in 1818, the Duke of Richmond, and in 1819, the Earl of Dalhousie, were appointed Governors of New Brunswick; and in each of their commissions, we find the same description of boundary—west by a line due north to the highlands, or the southern boundary of Quebec, and this southern boundary is described as coincident with the Bay of Chaleurs. During the same period the commissions of the Governors of the Canadas recognised the same boundary. Now, if the uninterrupted admission of Great Britain from 1783 to 1819 amounts to anything, then we may pronounce with certainty that justice and equity are on the side of the United States in this controversy.

Nor are the above the only concessions of the British Government. Under the treaty of amity, commerce, and navigation, concluded in 1794, commissioners were appointed by the two nations to decide "what river was truly intended under the name of the river St. Croix, mentioned in the treaty of peace." The very fact that no other question was raised at that time is an admission by both parties that the rest of the boundary was well understood. In fact, the British commissioners under that treaty allowed expressly, that the northwest angle of Nova Scotia was upon the highlands north of the St. John's and near the sources of the rivers that flow into the St. Lawrence. The British agent, in his argument to the commissioners appointed under the treaty of 1794, uses this language: "The limits of the province of Nova Scotia at the time of the treaty of peace were the same that were established when the province was anciently and originally created and named, in every respect, excepting the island of St. John, and the northern boundary line, which, by the creation of the province of Quebec, after the peace of 1763, was altered from the southern bank of the river St. Lawrence to the highlands described in the article of the treaty of peace now under consideration; and further, that with these exceptions, there never was but one and the same tract of country and islands that formed the province of Nova Scotia."

Here the British agent acknowledges that, at the time of the treaty, the province of Nova Scotia was bounded north by the highlands. Again, he says, "The province of Nova Scotia at the time of the treaty of 1783, was bounded to the northward by the southern boundary of the province of Quebec, which boundary was established by proclamation in 1763, and confirmed by an act of Parliament the same year, and included all the countries bounded on the south by a line from the Bay of Chaleurs, along the highlands which divide the rivers that empty themselves into the St. Lawrence from those which fall into the sea."

He also admits, throughout his argument, that the line north from the St. Croix must intersect these highlands, and that this intersection, or these highlands, must be north of the St. John's and near the Bay of Chaleurs. He tells us that it would be desirable to have the line so established that all rivers which have their sources should also have their mouths in the territory of the same nation. He contends for the western branch of the Scandiac, because that would leave all the rivers which rise in the United States to empty themselves within the States, and with the excep-

tion of the St. John's, would secure to Great Britain the same advantage. His words are, "A line due north from the source of the western or main branch of the Scudiac or St. Croix will fully secure this effect to the United States in every instance, and also to Great Britain in all instances except in that of the river St. John, wherein it becomes impossible by reason that the source of this river is to the westward, not only of the western boundary line of Nova Scotia, but of the sources of the Penobscot, and even of the Kennebec; so that this north line must of necessity cross the St. John's; but it will cross it in a part of it almost at the foot of the highlands, and where it ceases to be navigable. *But if a north line is traced from the source of the east branch, it will not only cross the St. John's within about fifty miles from Fredericton, the metropolis of New Brunswick, but will cut off the sources of the rivers which fall into the Bay of Chaleurs, if not of many others which fall into the Gulf of St. Lawrence.*" Great Britain now contends that the highlands intended by the treaty must be on the south side of the St. John's. But it will be seen that her commissioners, in 1797, allowed that whatever was assumed as the true St. Croix, the north line *must of necessity cross the St. John's*. The agent objects to the eastern branch, not because this north line would cross the river St. John, but because it would cross it within fifty miles of the capital of New Brunswick, and would cut off the sources of the rivers which fall into the Bay of Chaleurs. This amounts to a positive confession that our line must extend north to highland near the forty-eighth degree of north latitude. The British agent does not object to this line because it extends so far north as to cross the rivers that fall into the Bay of Chaleurs, but he founds his objection on the ground that it extends so far east.

We have, then, in the establishment of the true St. Croix, the confession of the British commissioners not only, but of the British Government itself, that the northwest angle of Nova Scotia must be north of the St. John's, and even north of some of the streams which flow into the Bay of Chaleurs. Now would Great Britain, famed for her diplomatic skill, have let such an opportunity pass, without urging her claim to six millions of acres of territory, if she had believed, for a moment, that she had any such claim? We say, she would not. The very fact that nothing was considered doubtful, at that time, but the true St. Croix, shows most clearly that she acquiesced in our claim. But this is not all; her agent allowed, and was compelled to allow, that our territory extended across the St. John's, and cut off some of the streams that fell into the Bay of Chaleurs.

But the concessions of Great Britain do not stop here. In the correspondence carried on between the American and British commissioners during the pendency of the treaty of Ghent, in 1814, this question of boundary was discussed. But the British commissioners had not at that time the boldness, or rather effrontery, to pretend that the northwest angle of Nova Scotia was south of the St. John's. The British commissioners call the attention of the American commissioners to the subject of this boundary. In a note from the British to the American commissioners, dated Ghent, August 8, 1814, they make certain proposals concerning the boundary through the great lakes, and then say, "If this can be adjusted, there will then remain for discussion the arrangement of the northwestern boundary, between Lake Superior and the Mississippi, the free navigation of that river, and such a variation of the line of frontier as may secure a direct communication between Quebec and Halifax."

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Here we discover the true secret of the British claim. They want a direct communication between Quebec, the capital of Canada, and Halifax, their great naval depot in North America. They found our territory intervening, and instead of having the boldness to claim it as their own, they ask for such a *variation* of the line as will give them that communication.

The American commissioners, under date of August 24, say, "They have no authority to *cede* any part of the territory of the United States; and to no stipulation to that effect will they subscribe." The British commissioners, under date of September 4, say, "The undersigned are persuaded that an *arrangement* on this point might easily be made, if entered into with a spirit of conciliation, without any prejudice to the interests of the district in question." The American commissioners say, in reply, under date of September 9, "They have no authority to *cede* any part of the State of Massachusetts, even for what the British Government might consider a *fair equivalent*." The British commissioners, in a note of October 8, say, "The British Government never required that all that portion of the State of Massachusetts intervening between the province of New Brunswick and Quebec should be *ceded* to Great Britain; but only that small portion of unsettled country which interrupts the communication between Quebec and Halifax, there being much doubt whether it does not already belong to Great Britain."

This correspondence was held in the summer and autumn of 1814, and it shows the feelings of the parties at that time. The Government of Great Britain did not, at that period, assert any claim to our territory; she avowed her object, viz: to have a direct communication between Quebec and Halifax. This is a direct confession that our territory extends so far north as to interrupt that communication; and hence they ask for a *variation* of the line, or a *cession* of so much of our territory as will give them that communication. And to make the request a little palatable, they affirm that they do not require a *cession* of *all the territory that intervenes between the places mentioned*, but only a *small portion of unsettled country*. Now, if concessions amount to anything, we have an admission which must be decisive in the case, that the present demand of Great Britain is an after thought, and is consequently unjust. The whole course of this correspondence goes on the ground that the territory in question is ours by the treaty. Great Britain does not claim it as a right; she states its importance to her, asks for a *variation* of line, or a *cession of territory*, and intimates that an equivalent will cheerfully be given, if she can be accommodated in this respect. Another concession of Great Britain may be drawn from our undisturbed possession of this territory. The Madawaska settlement, situated on the St. John's, was included in the census of the United States in 1820.

Nor is this the only evidence that this settlement on the St. John's rightfully belongs to the United States. Under a grant of the Commonwealth to Jackson and Flynt, of which we shall speak hereafter, Park Holland, an approved surveyor, was employed in 1794 to run the line. In his field book, now in the office of the land agent of the Commonwealth, he speaks thus of this settlement: "It may not be improper in this place to give some description of the village of Madawaska, as it lies within the limits of this Commonwealth. As you go down the river St. John from the east line we run to Canada, about ten miles, you come to the village. It is situated a little below the mouth of the river of the same name. It consists

of about fifty or sixty families of French, or, as they call themselves, Acadians, and were formerly known by the name of Neutral French. These people were drove from St. Ann's by the British, seven or eight years ago; and they with their small effects proceeded up the river and founded a settlement in this place," &c.

The survey being made in 1794, when there was no controversy relative to this northern boundary, is good evidence in the case. It shows the understanding of the parties at the time, and so furnishes a strong argument, drawn from contemporaneous construction.

The Legislature of Massachusetts granted a half township of land to Deerfield Academy in 1797, and another half township the same year to Westfield Academy. Both of these grants lay to the north and west of Mars Hill, and so fall within the territory now claimed by Great Britain. In later periods, Massachusetts has made grants of land still further north. In 1806 a half township was granted to General Eaton, and in 1808 a township was granted to the town of Plymouth. The two last mentioned grants are located on the Aroostook river, some eighteen miles north of the line now contended for by Great Britain. There is another case still more in point. On the 18th of April, 1792, Henry Jackson and Royal Flynt contracted with a committee of Massachusetts for the sale of eastern lands, for the purchase of all the lands belonging to the Commonwealth within the following bounds, viz: "westerly by a line on the east side of the Penobscot river at the distance of six miles therefrom; easterly by the river Schoodic, and a line extending northerly to the *highlands*, or by the line of demarkation, described in the treaty of peace between the United States and Great Britain, as relative to Lower Canada and the District of Maine." The contracting parties, not knowing the direction of the Penobscot, acted under the impression that the whole of said tract of country would embrace from one million to twelve or fifteen hundred thousand acres. Jackson and Flynt paid the sum of five thousand dollars in money, and obligated themselves to pay the residue in time as agreed upon.

In the year 1794, Park Holland and Jonathan Maynard, the surveyors appointed by the Land Committee, to survey the land above described, completed their survey, and returned a plan and field books, which are now in the office of the land agent of this Commonwealth. By the survey, it appeared that, instead of twelve or fifteen hundred thousand acres, the territory in question embraced two million nine hundred thousand acres; which, with lands previously bought by said Jackson and Flynt, would be nearly equal to five millions of acres. Finding themselves unable to meet their engagements, and a suit being instituted against them, they petitioned the Legislature of Massachusetts to be released from the contract, which was accordingly done.

The eastern line of this grant commenced at a point about ten miles south and west of the monument at the source of the St. Croix, and run north by the compass one hundred and fifty-two miles, passing the Aroostook and the St. John's, and terminating at the highlands about fourteen miles north of the last mentioned river. Mr. Holland, in his field book of this survey, says: "We find it something difficult to determine the height that divides the waters of the St. Lawrence from those of the St. John's; for the streams on these mountains are small, and run in different directions, according to the windings of the mountains they run between. But every circumstance considered, we think best to mark our bound at the 153d

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controversy relative to the land. It shows the un-derlying argument,

ownership of land to the same year to the north and west of the St. Croix, Great Britain. In fact, a line drawn further north. In 1763, and in 1808 a line was drawn to the last mentioned line north of the St. Croix. In no case still more north. In 1763, the Royal Flynt of eastern lands, Massachusetts within the Commonwealth of the Pe-ninsula by the river St. Croix, or by the line of the United States of Maine." In 1763, the Governor of Massachusetts, acting by the authority of the British, would em-broider the land with Jack-son's line, and obligat-

the surveyors described, com-posed of lines which are now the survey, it contains about ten thousand acres; the Royal Flynt, would be unable to meet the petitioners. They petitioned the Governor, which

about ten miles north of the St. Croix, and run along the Aroostook about fourteen miles. In his field book he defines the height of the St. John's; in different direc-tions. But in 1763

mile mark. The land in general from the St. John's to this corner is mountainous, but the mountains in general are free from rock or ledges, and rise gently, and are covered with hard wood, and a good soil, and well watered with springs and small brooks."

This survey is laid down on the map of the District of Maine, drawn by Osgood Carleton 1795, and published to the world. This survey was made in a public manner, and laid down upon the map of Maine, and, as it approached with eight or ten miles of the territory of New Brunswick, and was only a year or two prior to the convention which settled the true St. Croix, it must have been known to Great Britain that Massachusetts regarded the land as her own, and had covenanted to give a warrantee deed of a large portion of the territory which she now claims. In fact, a line drawn from the western head of the St. Croix, a line for which the British commissioners then contended, would include a part of this very territory. But Great Britain withdrew her claim, and thereby acknowledged that the territory was rightfully ours, according to the terms of the treaty.

Now can any person believe that Great Britain, ever watchful of her own interest, ever skilful in all the arts of diplomacy, would suffer Massachusetts to take possession of nearly two millions of her territory without even interposing an objection? Does this accord with her general character? Has she been disposed to yield her jurisdiction, give up her lawful possessions, and submit to an acknowledged inconvenience, when she was conscious that justice and equity were entirely upon her side? Now she is so jealous of her rights, that she has seized and imprisoned the citizens of an independent State and nation, only because they came upon the disputed territory, to take a census of a small village. Now, if an individual enters upon this territory, and does anything which seems to imply that it rightfully belongs to the United States, the voice of remonstrance is at once heard, and the person so entering is threatened with a severe punishment.

And would a nation, thus jealous of her rights, have permitted the State of Massachusetts to dispose of this very territory by townships, and much larger grants, if she had had the least suspicion that it belonged to her rightfully, by treaty? We cannot conceive of a clearer case. This wholesale grant, by our own Commonwealth, shows that Massachusetts had no suspicion but that the territory was within her jurisdiction. The act of surveying and taking public possession in the very presence, and under the eye of the British authorities, and that without any remonstrance on their part, proves beyond controversy that those who made the treaty knew full well that the territory in question fell within the limits of the United States. Let Massachusetts or Maine make such a grant at the present day, and the voice of remonstrance would at once be heard. Though the territory is not hers, yet so long as there is any claim to it on her part, so long as the question is no open one, Great Britain considers that she is prompted both by interest and by honor to interpose her objections to any act on our part which could in the slightest degree be construed into an admission that this territory rightfully belongs to the United States. But why this vigilance at the present day? Has she become more watchful over her colonies than she was formerly? The fact is, for the first thirty years after the treaty of peace, she did not even dream that this territory fell within her dominions; but of late, encouraged by the indifference of our own Government, she has asserted her claim, and she finds that the United States are disposed to re-cede with the same pace with which she advances.

Now with all these facts and these concessions on the part of Great Britain before us, we can conceive of neither propriety nor justice in her claim to the territory in question. In the treaty of 1783, she only affirmed an old boundary, which had been long established, and often recognised by every department of her Government,—a boundary laid down upon all the maps at that period, and one which has been constantly recognised from the signing of the treaty till 1820, a period of nearly forty years. During this period she saw us in possession of this very territory, disposing of it by townships, and even in tracts of millions of acres, without even intimating that we were encroaching upon her possessions. In 1797, when the subject of the boundaries was brought directly before her Government, she acknowledged by her agent that our territory *must of necessity* extend north of the St. John's, and that this stream should be regarded as an Atlantic river. In 1814, when the very question now before us was brought distinctly into view, her commissioners humbly asked for a *variation* of the line, or a *cession of a small part of our territory*, so that she might have a direct communication between Halifax and Quebec,—thereby admitting that the territory was rightfully ours.

Your committee can hardly conceive of a stronger claim or a better title than the United States have to the disputed territory. We cannot express our convictions better than by adopting the strong language of the present chief magistrate of Maine. "If," says he, "there is any meaning in plain language, and any binding force in treaty engagements, if recognition and acquiescence for a long series of years on the part of Great Britain in one uniform expression and construction of the boundaries of her provinces of Canada and Nova Scotia, is of any weight, then the right of Maine to the territory in dispute is as clear and unquestionable as to the spot on which we now stand. It requires indeed the exercise of charity to reconcile the claim now made by Great Britain with her professions of strict integrity and high sense of justice in her dealings with other nations; for it is a claim of very recent origin, growing from an admitted right in us, and proceeding first to a request to vary our acknowledged line for an equivalent, and then, upon a denial, to a wavering doubt, and from thence to an absolute claim.

"It has required and still requires all the talents of her statesmen, and skill of her diplomatists, to render that obscure and indefinite which is clear and unambiguous. I cannot, for a moment, doubt, that if the same question should arise in private life, in relation to the boundary of two adjacent farms, with the same evidence and the same arguments, it would be decided by any court in any civilized country without hesitation or doubt, according to our claim."

We speak with confidence on this subject, because we feel a consciousness that we are borne out by the facts in the case. We are satisfied that any man of ordinary capacity, who will examine the subject free from bias, will come to the same result. We believe that no jury in the land, no judicial tribunal in any civilized country, could, acting under the responsibility of an oath, give verdict or sentence against us. Our claim is so clear and indisputable, that our only surprise is, that any nation, making any pretensions to magnanimity, or even to justice, should for a moment call it in question. The language of the treaty is so clear, that no argument can make it more definite. In fact,

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We have already seen the object which Great Britain has in view—she wants a direct land communication between Halifax and Quebec. This was avowed in the negotiation during the pendency of the Ghent treaty. But that treaty was concluded in 1814—15, without any cession of territory, or any concession on our part that the territory now in dispute was held by us by any doubtful tenure. The fifth article of that treaty recited the fact that the line had never been accurately run, and the monuments erected, and then provided that two commissioners should be appointed to survey the country and mark the dividing line by metes and bounds, according to the provisions of the treaty of 1783; and in case of disagreement, it was provided that the whole subject should be referred for decision to some friendly power.

It will be seen that this treaty does not admit, for a moment, that there was or could be any doubt respecting the meaning of the treaty of 1783; it only provides for the running of the line agreeable to that treaty. The fifth article, which provides for these commissioners, commences with this recital:

“Whereas, neither that point of the highlands lying due north from the source of the river St. Croix, and designated in the former treaty of peace as the northwest angle of Nova Scotia, nor the northwesternmost head of the Connecticut river, *has yet been ascertained*; and whereas, that part of the boundary line between the dominions of the two powers, which extends from the source of the river St. Croix directly north to the abovementioned northwest angle of Nova Scotia, and thence along the said highlands which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic ocean, *has not been surveyed*; it is agreed,” &c.

By this recital, it will be at once perceived that the high contracting parties do not admit that there is any uncertainty in the meaning of the treaty; they only assert that the line has not been surveyed, and the exact metes and bounds recorded; and to effect this object, they appoint or rather provide for the appointment of two commissioners. The language of the article is: “The said commissioners shall have power to ascertain and determine the points above mentioned, in conformity with the provisions of the said treaty of peace of 1783.”

The commissioners appointed under this treaty met and commenced running the line in 1817, and in 1822 made separate reports to the two Governments. It was during these surveys and examinations that Mr. Odell, the British surveyor, first started the pretence that Mars Hill was the highlands mentioned in the treaty of 1783; and from that period to the present time Great Britain has been urging her claim in a bolder and bolder tone; more, however, from the concessions of our own Government, than from any new evidence on her part in support of her pretensions.

Your committee now propose to state the positions assumed by Great Britain, and to examine the arguments she alleges in their support. The convention of 1797 settled the question concerning the true St. Croix, and erected a monument at its source. Thus far there is no controversy between the two Governments. Great Britain allows that the line must run due north from this monument to the highlands. But she maintains that Mars Hill, a small isolated mountain, about forty miles north of this monument, is the range of highlands mentioned in the treaty. By recurring to the subjoined map A, it will be seen that Mars Hill is situated between the

Penobscot and the St. John's, and is about one hundred miles south of the highlands for which we contend, the highlands which divide the rivers that flow into the St. Lawrence from those that fall into the sea. The highlands for which we contend, and those contended for by Great Britain, are both laid down on the map, and are both due north from the source of the St. Croix.

But which are the highlands contemplated in the treaty? Whatever disputes may arise, one thing is certain. Wherever these highlands are situated, they must divide the rivers which empty themselves into the St. Lawrence from those that fall into the sea or Atlantic ocean. The treaty does not bound us north by the highlands simply, but by highlands which are therein described; highlands which perform a certain office, "which divide the rivers which empty themselves into the St. Lawrence from those that fall into the Atlantic ocean."

Now apply this definition of the highlands to Mars Hill and the isolated elevations which are situated to the west of it. Do they divide the waters which flow into the St. Lawrence from those that fall into the Atlantic? They do not; they divide the waters of the St. John's from the waters of the Penobscot; both of which are Atlantic rivers. These pretended highlands do not answer the description of the treaty; for, instead of dividing the rivers that flow into the St. Lawrence from those that fall into the Atlantic, they have no connexion whatever with the rivers that empty themselves into the St. Lawrence in a direction north from the monument: they, in fact, divide the rivers that flow into the Atlantic from those that flow into the Atlantic! and so cannot be the highlands mentioned in the treaty.

Nor is this all: By the very terms of the treaty that portion of the highlands intersected by the line due north from the source of the St. Croix must be the northwest angle of Nova Scotia. And where is that situated, or how is that angle formed? By recurrence to all the ancient documents, it will be seen that the southern boundary of Quebec and the northern boundary of Nova Scotia coincide, and that they run "along the highlands which divide the rivers that empty themselves into the St. Lawrence from those which fall into the sea, and also along the north coast of the Bay des Chaleurs, and the coast of the Gulf of St. Lawrence."

By recurring to Mitchell's map, which is allowed to have governed the commissioners of both nations when they signed the treaty of 1783, and which is herewith subjoined, it will be seen that the Bay of Chaleurs is situated north of the forty-fifth degree of north latitude. This southern boundary of Quebec, or northern boundary of Nova Scotia, must pass to the north of the Bay of Chaleurs, which, according to the map which was before the commissioners, must be thirty-five or forty miles north of the forty-eighth degree of north latitude. These highlands are delineated on Mitchell's map, and they show, most conclusively, that the line contemplated by the treaty of 1783 could not approach within a hundred miles of Mars Hill; nor is there any such mountain as Mars Hill, or, in fact, any other mountain south of the St. John's, laid down upon that map, which could be intersected by a north line from the source of the St. Croix. How then can they pretend that Mars Hill is the highlands contemplated, when there is no such mountain laid down upon the map recognised as the true topography of the country as it was then understood?

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monument, intersecting a line running westerly from the north coast of the Bay of Chaleurs, along the highlands in which the streams that flow into the St. Lawrence have their source. This forms the angle as contemplated in the treaty, and it must be nearly a right angle. The line along the highlands, where it is intersected by the meridian of the monument, must be nearly east and west, to answer the description given of it by the British Government themselves. Whenever the southern boundary of Quebec is spoken of by that Government, it is declared to be a line from the north coast of the Bay of Chaleurs along the highlands. Now, it is manifest that if this line bounds the province of Quebec, or Lower Canada, as it is now called, on the *south*, this southern boundary line must run easterly and westerly. The same remark will apply to the northern boundary of Nova Scotia. That is always described, as we have already seen, as the southern boundary of the province of Quebec, or *on the north by said boundary as far as the western extremity of the Bay of Chaleurs*.

But let us for a moment see how this description of boundary will apply to the line contended for by Great Britain. She makes Mars Hill the northwest angle of Nova Scotia. Now, a line drawn from Mars Hill to the western extremity of the Bay of Chaleurs, so as to pass to the north side of it without crossing it, must be nearly north and south; and, instead of being along the highlands which divide the rivers that flow into the St. Lawrence from those that fall into the sea, or Atlantic ocean, it would have no possible relation to the rivers that flow into the St. Lawrence, and would run directly across the St. John's, a river that empties into the Atlantic ocean. And would this answer the description given by the Crown and Parliament of the northern boundary of Nova Scotia? No; but it would contradict that description in every particular. Instead of being easterly, it would be northerly; instead of that province being bounded westerly by a line due north from the source of the St. Croix, three-fourths of its western boundary would be a line drawn from Mars Hill, the British highlands, to the Bay of Chaleurs; and, instead of this line running easterly along the highlands which divide the rivers that fall into the St. Lawrence from those that flow into the Atlantic, it would extend northerly along *lowlands* and across the river that flows into the Atlantic, and leave the other class of rivers entirely out of the question. We can hardly conceive of a more palpable violation of the language of the British Government, or of the treaty. Nor is this the only contradiction with which their pretensions are embarrassed. If Mars Hill is the northwest angle of Nova Scotia, then Nova Scotia has two northwest angles. All the descriptions of her boundary allow that her north boundary extends to the Bay of Chaleurs. Now, if you make Mars Hill the northwest angle of Nova Scotia, and continue a line from thence, as you must, to the Bay of Chaleurs, you will have another northwest angle at that point. But the treaty contemplates but one northwest angle. The language employed in the treaty is, "from *the* northwest angle of Nova Scotia." The definite article *the*, as it is here used, plainly points out one angle, and one only. But in direct opposition to this, Great Britain gravely contends for two northwest angles! But, after all, what sort of an angle is made by a line running from Mars Hill to the western extremity of the Bay of Chaleurs? It would be almost a straight line from the source of the St. Croix to Mars Hill, and thence to the western extremity of the above named bay; and your committee have not geometrical acuteness enough to find an angle on a straight line.

But the whole plea is preposterous. The map which is acknowledged to have governed the parties at their public conferences has no mountain delineated from Mars Hill to the Bay of Chaleurs, nor is Mars Hill itself there laid down. The claim now put forth by Great Britain is not only absurd in itself, and opposed to the language of the treaty, but is in direct opposition to her own acknowledgments and confessions. The British agent employed to settle the question as to the true St. Croix, as we have already seen, declared that the line *must of necessity cross the St. John's*. He also contends that the northwest angle of Nova Scotia is located at the very place for which we contend. "Can any man hesitate to say," he asks, "that he is convinced that the commissioners at Paris, in 1783, in forming the second article of the treaty of peace, in which they have so exactly described this northwest angle, had reference and were governed by the boundaries of Nova Scotia, as described in the grant to Sir William Alexander, and the subsequent alteration in the northern boundary, by the creation of the province of Quebec."

It is objected to our claim, that a line due north from the source of the St. Croix intersects no mountain north of the St. John's. This objection is founded on the assumption that the highlands mentioned in the treaty must, of necessity, be mountains. But this is not the case. The word mountain is not used in the treaty, nor in any of the numerous documents which describe the same boundary. They uniformly use the word *highlands*, and this term is invariably defined to be those highlands which divide the rivers which run in different directions. The term denotes simply the *height of land or summit*, where streams of water take their rise; and it may be more or less elevated. When any tract of country is spoken of, as the height of land which divides the streams, it by no means follows that this must be a mountain of great elevation. The very fact that any land sends its streams in different directions, shows that it is the summit or height of land.

Now apply this to the tract in question. It will be seen by the map A, which is allowed by the British Government to be a just delineation of the topography of the country, that the north line, as claimed by the United States, terminates at a point situated between the head waters of the Metis, a stream which flows into the St. Lawrence, and one of the branches of the Ristigouche. The very fact that the streams run in different directions from this point proves that the land is somewhat elevated, and this answers the description of the treaty. From this point of intersection to the westward, there is an elevation of land sufficient to divide the waters. We care not whether these lands are more or less elevated, whether they are high table lands or abrupt acclivities, they answer equally the description given in the treaty of 1783. The course of the rivers as laid down upon map A leads us naturally to the belief that the highlands, where they are intersected by the north line from the monument, are less elevated than this ridge is, as it proceeds westward. Mr. Partridge, the United States surveyor, has given us the elevation of several of the mountains, by which it appears that the highest point of the highlands by him surveyed is about 500 feet higher than the highest summit of Mars Hill.

The highest summit of Mars Hill has been ascertained to be 1,500 feet above the river St. John's. About 60 miles north of Mars Hill, the north line, after having crossed the St. John's, reaches the highlands which divide the waters of that river from those of the Ristigouche. Mr. Johnson, the

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American surveyor, says that this ridge, which is called Sugar mountain, is evidently the highest land on the line, from the source of the St. Croix to that place. This is confirmed by the British surveyor, Mr. Banchette's vertical section, by which it appears that this mountain (north of the river St. John's) is more than 500 feet higher than the highest peak of Mars Hill, or more than 2,000 feet above the surface of the river St. John's.

The exact elevation of the point claimed by us as the northwest angle of Nova Scotia cannot be stated. But making every due allowance for the slight differences between the statements of the two surveyors, it appears clearly that the dividing ridge at about 144 miles from the monument, (the point A on map A,) is somewhat, but not much lower than the ridge at 132 miles, presumed to be the highest spot on the whole line; and that its elevation may therefore be estimated at about 2,000 feet above the level of the sea.

Let any person cast his eye upon map A, and trace the tributaries of the Ristigouche, and the streams which rise in that section, and he will be sensible that there is an elevated tract between the Grand Fourche, the last tributary of the Ristigouche, crossed by the American line in its course northward, and Beaver river, the source of the Metis. And what appears obvious from the nature of the case, is affirmed by Mr. Odell, the British surveyor. He tells us that the "general face of the country may be considered as increasing moderately in elevation from the Ristigouche northward, to within two or three miles of the Grand Fourche, and then descending rapidly to that stream. Immediately after crossing the Grand Fourche, the ground rises very steeply for about three-quarters of a mile, and very moderately for a quarter of a mile more, and then descends moderately all the way to Beaver river."

Mr. Johnson, the United States surveyor, speaking of the same country, says: "Proceeding north from the last mentioned ridge, the land continues *very high*, though not very uneven, to 144 miles, where the land is nearly as high as at 132 miles, and is the ridge which divides the waters emptying themselves into the St. Lawrence from those which flow into the Atlantic ocean. On the top of this ridge, at the distance of 144 miles, is a large yellow birch tree; from this point to Beaver creek, there is a general and very considerable descent, interrupted by a few places of rising ground for a short distance."

From the imperfect surveys that have been made of the highlands near the tributaries of the St. Lawrence, it is impossible to speak with certainty of their altitude; but no man, unbiassed by party feeling, can for a moment doubt the existence of highlands in that region; and whether they are ten hundred or ten thousand feet above the level of the ocean, they answer equally well the description of the treaty; *they are highlands which divide the rivers.*

But Great Britain maintains that the north line from the monument must terminate at a mountain, and continue along a mountain range. Let us apply this principle to the line for which she contends: Does she find a chain of mountains running south and west of Mars Hill? Mr. Partridge, the American surveyor, speaking of this subject, says: "Mars Hill is an insulated eminence, having no connexion, that I could discover, with any ridge of highlands. To the northwest and north, the country appears to rise pretty uniformly, and finally to terminate in a ridge of elevated land, which extends, to appearance, nearly in a northeast and southwest direction as far as the eye can reach. Indeed, the whole country to the west, and

as far north as the ridge just mentioned, setting aside the small inequalities on its surface, appears to form one immense inclined plain fronting towards the south, with a gentle inclination to the east."

George W. Coffin, Esq., land agent of this Commonwealth, who ran the line now contended for by Great Britain, in 1828, in a note addressed to a member of the Committee on Public Lands, says: "At the request of the Hon. Albert Gallatin and the Hon. William P. Preble, agents of the United States, on the subject of the eastern boundary of the United States, that a survey should be made under the particular and personal superintendence of the land agents of the two States, to ascertain the true character of the dividing ridge contended for by the British Government, as the boundary of the State of Maine, and of the United States, Daniel Rose, Esq., then the land agent of the State of Maine, accompanied me, in the autumn of the year 1828, to the summit of Mars Hill. We ascended to the top of the observatory erected on the hill; the atmosphere being tolerably clear, we had an extensive view of the surrounding country, which appeared generally to be very level, with the exception of some few eminences, of which we took the bearing of the discoverable heights, as follows: A high mountain, called Chase's mountain, and, by the Indians, Marcharchuse, bore north 64° west, about forty miles distant; two high hills at the head of Aroostook Presque Isle, south 73° west; a high peaked mountain, bearing north 43° west, which our guide informed us was a little south of the Aroostook river, about thirty miles distant; also, two high hills at the head of the St. John's Presque Isle, bearing north 41° west, distant about twelve or fifteen miles. The atmosphere of the southern section being smoky, we could not see Mount Katakadin. Mars Hill itself is a sugar-loaf hill, conspicuous only by reason of its standing by itself, an isolated spectacle, having no connecting chain of highlands.

"Pursuant to the request of the legitimate agents of the United States, we descended to the western base of Mars Hill, and commenced our survey, keeping an account of the ascent and descent of each day's survey, passing the sources of all the streams in our course, being careful not to cross over any water that we could not step over. Most of the distance from Mars Hill to the source of the east branch of Penobscot river, we found to be flat, swampy, hurricane land, with now and then some hardwood hills, rising from fifty to one hundred and fifty feet. About twelve and a half miles from Mars Hill, we came to a high hill; we took its altitude, and found it to be two hundred and sixty-four feet, and is the same we saw from Mars Hill, bearing north 41° west, which was the only considerable height we encountered in the whole survey; this being an isolated elevation, it appears conspicuous for a considerable distance. We passed about three miles north of Chase's mountain, and finished our survey for that season at the portage between Penobscot and the Aroostook rivers. The whole distance was chained, being fifty-two miles; and the rise and fall carefully noted; and I have no hesitation in saying, without fear of contradiction, that the waters of the Penobscot and Aroostook rivers take their rise in low swampy land, with some trifling undulations."

From this representation, given by the land agent, of Mars Hill, and the country dividing the waters of the St. John's from those of the Penobscot, it will be seen that, instead of a mountain range, the country is low and flat, with here and there a little eminence rising only from fifty to one hundred and fifty feet. A committee of our own Legislature, who visited this

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section in 1835, say : " It is known that Webster pond, which is the source of one of the large branches of the east fork of the Penobscot, approaches near to one of the lakes in the great chain of lakes, constituting the source of the Allagash river, a large tributary of the St. John's. It was evident, if the waters of the Allagash could be made to flow into the Penobscot, that the timber of this extensive and productive region must take that direction to market. The value of these lands would be amazingly enhanced, if an improvement of this kind should be found practicable. The committee provided instruments for taking the height of the waters, agreeably to the design, and for the purposes suggested heretofore. It was found that the summit level between the waters of the Allagash lake and Webster pond scarcely exceeded two feet, and that a canal about one hundred rods in length, and perhaps six feet in depth, with a trifling dam at the outlet of the lake, would accomplish all that was desirable."

This statement of the committee confirms the statement of the land agent and of Mr. Partridge. It requires no great knowledge of mountains and the waters they send forth, to know that streams are never large at the summit of high elevations. The fact that the waters of the Penobscot and the St. John's approach within one hundred rods of each other, and are in quantities so large as to afford navigation for lumber, shows, most conclusively, that the dividing ridge cannot bear the name of a mountain. This summit scarcely exceeds two feet; and the committee assure us that the streams on both sides of the summit are sufficiently large to furnish an easy navigation to lumber; a fact which proves, beyond a doubt, that these rivers have their sources in a flat level country.

Now, does this dividing land answer the description for which Great Britain contends? Is an isolated pyramid, subsiding into a marshy bog, a continuous range of mountains? The very idea is absurd. The land dividing the waters of the St. John's from the Penobscot does not conform in any degree to the definition of highlands, for which the British Government contends. And the fact that neither Mars Hill nor any other mountains between the St. John's and the Penobscot are laid down upon the accredited document, Mitchell's map, shows, conclusively, that the commissioners, in 1783, could not have contemplated any range of highlands south of the St. John's.

Another reason why Mars Hill cannot be the highlands of the treaty, and one to which we have already alluded, is, that it does not divide the waters which flow into the St. Lawrence from those which empty themselves into the Atlantic ocean, according to the express language of the treaty. But here we are met with the objection that the Ristigouche and the St. John's are not Atlantic rivers, the former falling into the Bay of Chaleurs, and the latter into the Bay of Fundy. This objection is founded on the position that the Bay of Chaleurs and the Bay of Fundy are not the Atlantic ocean, or any part of the Atlantic ocean. We readily allow that these and other bays are frequently spoken of in opposition to the Atlantic ocean; and it must be admitted, on the other hand, that they are frequently spoken of as one and the same thing. The word Atlantic ocean or sea, like every other term, must be understood in a sense more or less extensive, according to the position in which it stands, and the purpose for which it is used. When the term *sea* or *ocean* is used in its broadest sense, it includes all the gulfs and bays with which it is connected; and when it is used in opposition to them, it of course excludes them.

But how, or in what sense, is it used in the treaty of 1783? That instrument speaks of the Atlantic ocean, and uses that term in contradistinction from the St. Lawrence. "Highlands which divide the rivers which empty themselves into the St. Lawrence from those which fall into the Atlantic ocean." Such is the language of the treaty. The earlier documents use the word *sea* instead of *Atlantic ocean*. Here, then, the treaty contemplates two classes of rivers: those that run northwesterly, and those that run southeasterly; those that flow into the St. Lawrence, and those that flow into the Atlantic ocean. All the rivers that flow into the St. Lawrence constitute one class, and all others that rise in these highlands constitute the other class. In the sense of this clause of the treaty, the Atlantic ocean is used generically, and includes all the gulfs and bays in that region, except the St. Lawrence, with which it is contrasted. This is the obvious construction of the treaty; and we are unable to perceive how a high-minded and honorable nation can stand before the world, and keep herself in countenance, while urging her plea.

How is the term ocean or sea generally understood, when used in this manner? How has it been used and understood by Great Britain herself? In the preliminary articles, and in the definitive treaty of 1783, the terms *sea* and *Atlantic ocean* frequently occur. The third article, which relates to the subject of the fisheries, contains these words: "It is agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind, on the *grand bank* and on all other banks of Newfoundland; also in the *Gulf of St. Lawrence*, and at all other places in the *sea*, where the inhabitants of both countries used at any time heretofore to fish."

In this article the Gulf of St. Lawrence is used as synonymous with *sea*—"in the Gulf of St. Lawrence, and all other places in the *sea*." Now if the Gulf of St. Lawrence may be regarded as a part of the sea, why not the Bay of Chaleurs and the Bay of Fundy? Nor is this all; in the same treaty the Gulf of Mexico is denominated the *ocean*.

Article VIII. "The navigation of the river Mississippi, from its source to the *ocean*, shall forever remain free and open to the subjects of Great Britain and the citizens of the United States." We all know that the Mississippi flows in the Gulf of Mexico, but in the treaty it is said to flow into the ocean. Now who would risk his popularity by maintaining that the Mississippi did not communicate with the ocean, because that particular part of the ocean is by way of distinction called by another name? If the Mississippi can with propriety be called an Atlantic river, if it can be affirmed of it, as it is in the treaty, that it empties itself into the ocean, the same can be said of the St. John's and the Ristigouche. These examples show in what sense the two contracting parties use the terms *sea* or *ocean*.

No man free from bias can, as it appears to us, read the treaty without being fully satisfied that the commissioners regarded the Ristigouche and St. John's as Atlantic rivers. It was so understood by the British Government itself, for more than thirty years from the signing of the treaty. The British statement in 1797 not only acknowledged that the line north from the St. Croix must cross the St. John's, but affirmed that the St. John's was an Atlantic river. When contending for the western branch of the St. Croix, their agent says, "had the treaty intended that this north line should intersect a number of rivers which empty their waters through a British province into the *sea*," &c. Here the British agent applies the

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of 1783? That term in contradistinction to the rivers which fall into the sea. The earlier documents, then, the treaty of 1783, and those which relate to the St. Lawrence highlands contain, the Atlantic coast in that region, is the obvious evidence how a high-land keep herself

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treaty without the St. Lawrence and the British Government. The north from the St. John's river of the north line through a branch of the Atlantic applies the

term sea to such inlets as the Bay of Chaleurs and Bay of Fundy. But it is not by implication alone that he allows this; he assures us that the St. John's falls into the sea. When contending for the western head of the St. Croix, he says, "a line drawn north from that termination upon the maps will not intersect any of the rivers which empty themselves into the sea, north of the mouth of the river St. Croix, except the St. John's."

If it were necessary to produce any further concessions of the British Government, we could refer to the treaty of Ghent, where the term *Atlantic ocean* is used to include all gulfs and bays, and inlets of every description. In the second article of that treaty, it is provided that all vessels captured in certain parts of the ocean shall be given up, if the capture takes place a certain number of days after the ratification of the treaty. In that treaty, we find words of this kind: "sixty days for the Atlantic ocean, south of the equator, as far as the latitude of the Cape of Good Hope." In this quotation, and several others that might be made from that article, the term *Atlantic ocean* is used to include all bays, harbors, and waters connected with the ocean.

But Great Britain gravely asserts, in opposition to all this, in direct repugnance to the plain sense of the treaty, and her own numerous concessions, that the Bay of Fundy cannot be considered as a part of the ocean. And what is her argument in support of this assertion? Why, she tells us that in the treaty itself, the Bay of Fundy is spoken of in contradistinction from the ocean. As this is her main argument, we will give it a passing notice. The second article of the treaty, after describing the boundary line inland, adds: "comprehending all islands, within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic ocean, excepting such islands as now are, or heretofore have been, within the limits of the said province of Nova Scotia."

This clause of the treaty bounds the United States on the ocean; it declares that all the islands within twenty leagues of the shore shall be included within the United States. But it was necessary to fix the northern and southern terminus of this line drawn in the ocean sixty miles from the shore; and for this purpose the treaty provides that lines shall be drawn due east from the points where our land boundary line touches the ocean. It was desirable that these points should be fixed with as much certainty as the case would admit of; and consequently they designate the point from which the southern line shall be drawn due east, by saying where the boundary of East Florida shall touch the Atlantic ocean. This was all that could well be said in that case. The St. Mary's river fell into the ocean that was our southern boundary. There was no particular bay whose name could have been used, to designate what precise portion of the ocean; was intended. But when they came to the northern boundary, they could be more definite. Our line in that quarter reaches the ocean in a portion of it which has a distinctive name; consequently, instead of using the general term *ocean*, the more specific term *Bay of Fundy* is employed. But does this prove that the Bay of Fundy is no part of the ocean? By no means. This bay, like all others on our coast, is a part of the ocean, and the distinctive term *Bay of Fundy*, is used to indicate what particular part of the ocean is intended. This report of the committee is dated "Com-

monwealth of Massachusetts," also, "in Senate;" but would any sound critic, any fair minded man, maintain that, because *Massachusetts* and *Senate* are both used, the Senate chamber was not within the Commonwealth? We think not. But we are not able to perceive that the inference is any less clear in this case than in the other.

But where would the reasoning of Great Britain carry us? and what absurdities would it not involve! Suppose, for the sake of the case, that the Ristigouche and St. John's are not rivers that flow into the Atlantic in the sense of the treaty; then they must be excluded, as not constituting either of the classes of rivers mentioned in that instrument. The word *divide* implies a near proximity or contiguity of the thing divided. Take the boundary for which England contends, and what rivers does it separate? Not rivers which flow into the St. Lawrence from those that flow into the ocean; but, according to her argument, these highlands divide the rivers that flow into the Bay of Fundy from those which flow into the Atlantic ocean. But this does not conform to the language of the treaty.

But where would the argument of Great Britain lead us? If the St. John's is not an Atlantic river, because it empties into the Bay of Fundy, so neither is the Penobscot, because it empties into the Penobscot bay. The Kennebec cannot be an Atlantic river, because it empties into the Bay of Sagadahock. On the same ground the Connecticut must be excluded, because it empties into Long Island sound. In this manner we could exclude the Hudson, the Delaware, the Potomac, and the whole class of Atlantic rivers. They empty themselves into bays, or sounds, or harbors, or some branch or portion of the Atlantic which bears some distinctive name, and, according to the argument of the British Government, they cannot be rivers which empty themselves into the Atlantic ocean.

Thus is the whole Atlantic border interested in this question. The same plea which is to deprive Massachusetts and Maine of six millions of their territory will cover the whole seaboard from Maine to Georgia, and State after State may be called upon to yield large portions of territory, to satisfy the grasping cupidity of a foreign nation. But we will not spend any more time upon this subject: it is too clear to require any argument. The rivers in question do empty themselves into those portions of the ocean designated by some distinctive name. These bays are parts of the sea or ocean. And every school-boy knows that a "gulf, or bay, is a part of the sea or ocean extending into the land."

There is another branch of this controversy, which relates to the head or source of Connecticut river. The treaty declares that the line shall pass along the highlands "to the northwesternmost head of Connecticut river; from thence down, along the middle of that river, to the forty-fifth degree of north latitude; from thence due west on said latitude," &c. By surveys made under the commissioners provided for by the Ghent treaty, it is ascertained that there are four of those branches which have their sources in the highlands, about fifteen or twenty miles north of the forty-fifth degree of latitude. These streams, proceeding from west to east, are now known by the respective names of Hall's stream, Indian stream, Perry's stream, and Main Connecticut. The last three streams are all united into one, about two miles north of the forty fifth parallel of north latitude, and, thus united, they form what was known by the commissioners of 1783 as the Connecticut river, and it was then supposed that this union was at the parallel before mentioned. But it has been found by calculation that this union is two miles north of that parallel. The mouth of Hall's stream, known

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by that name in 1783, is below, and about a quarter of a mile south of, the union above mentioned, but above, and a half a mile north of, this parallel, as it has been fixed by later and more correct observations.

The expression in the treaty, "*northwesternmost* head of Connecticut river," plainly implies that there are more than one head or source of that river. The surveys show, at once, that the middle branch of Hall's stream is the *northwesternmost* head of that river, and it is accordingly claimed by the United States as the true *northwesternmost* head of the river contemplated by the treaty. Believing this subject to be as clear as any remarks of ours can make it, we will not pursue this branch of the subject.

The treaty of Ghent provided that commissioners should be appointed to run and establish the boundary line; it was also provided in that treaty that, in case of disagreement, the whole subject should be referred for decision of some friendly power. Under this treaty, commissioners were appointed, and after some five years of examination they came to different results, and the whole subject was submitted to the King of the Netherlands by the convention of 1827. His majesty, after examining the subject, submitted his decision or award in 1831; but this award was rejected by both of the high contracting parties, on the ground that the arbiter did not decide the question submitted.

He, in fact, confesses that he cannot decide upon the question of the *highlands*, and the *northwest angle of Nova Scotia*, and finally gives it as his opinion "that it will be *convenient or suitable* to adopt, as the boundary of the two States, a line drawn due north from the source of the river St. Croix to the point where it intersects the middle of the deepest channel of the river St. John; thence the middle of the deepest channel of that river, ascending it, to the point where the river St. Francis empties itself into the river St. John; thence the middle of the deepest channel of the St. Francis, ascending it, to the source of its *southwesternmost* branch," &c. This proposed boundary is indicated on the subjoined map A by a dotted line.

This award was submitted to the Senate of the United States, and, though various motions were made and votes taken, the vote which tested the views of that body stood thirty-five to eight. Thus, instead of sustaining the award of the King of the Netherlands by a majority of two-thirds, as the constitution requires, more than three-fourths were opposed to the acceptance of it. The award was rejected principally on the ground that his majesty had not decided the question submitted, and that the United States had no authority to cede any portion of the State of Maine.

After the rejection of the award of the King of the Netherlands, the Senate of the United States passed a resolution advising the President to open a new negotiation with the British Government on the subject of the boundary. But how did the President renew this negotiation? Did he assert firmly the claim of the United States to this territory—a territory over which we had, for more than thirty years, exercised undisputed jurisdiction? No; he begins with a kind of concession, that the treaty of 1783 can never be executed, and with an implied design to accede to the unsupported claim of Great Britain.

Mr. Livingston, in his note of July 21, 1832, to Mr. Bankhead, the *Chargé d'Affaires* of Great Britain, the very note in which he informed him that the Senate had refused to accept the award, says, "The undersigned is instructed to say, that, even if the negotiators of the two parties are unable to agree on the true line, designated by the treaty of 1783, *means will probably be found of avoiding the constitutional difficulties* that have

hitherto attended the establishment of a boundary more convenient to both parties than that designated by the treaty, or that recommended by his majesty the King of the Netherlands, an arrangement being now in progress, *with every probability of a speedy conclusion*, between the United States and the State of Maine, by which the Government of the United States will be clothed with *more ample powers than it has heretofore possessed*, to effect that end."

Now, what might be expected from such a renewal of the negotiation? Great Britain had, in 1814, expressed a desire to possess a portion of our territory, lying between Quebec and Halifax; but she was told in reply that our Government had no constitutional power to cede that territory. On this ground, principally, was the award of the King of the Netherlands rejected. But this new negotiation was opened with an assurance in advance, that, if the negotiators could not agree upon the line designated by the treaty, means *would probably be found of avoiding this constitutional difficulty*; that there was *every probability that more ample powers would speedily be given to the President*. Mr. Livingston expressly states, in his note, that the Senate had advised the President to open a negotiation for the ascertainment of the boundary "according to the treaty of peace of 1783;" but the President volunteers the assurance, that, if they could not agree upon that line, there was *every probability* that he should be *speedily* clothed with power to avoid the constitutional difficulty, that is, with power to *yield some of our territory!* And to make the concession the more perfect, to strengthen, as it would seem, the claims of Great Britain, he proposes to yield our jurisdiction in a territory over which we had exercised an uninterrupted jurisdiction for a half century. His words are: "Until this matter shall be brought to a final conclusion, the necessity of refraining, on both sides, from any exercise of jurisdiction beyond the boundaries now actually possessed, must be apparent, and will, no doubt, be acquiesced in on the part of his Britannic Majesty's provinces, as it will be by the United States."

We ask again, what might be expected to result from a negotiation commenced with such concessions? Could any man believe that Great Britain, skilled in all the arts of diplomacy, would settle this controversy according to the obvious language of the treaty, when she had the assurance that other terms would, in all probability, be acceded to, and that speedily? Certainly not. Under these assurances, no reasonable hope could have been entertained that the British cabinet would attempt even to ascertain the true boundary described in the treaty. She would have been as blind to her own interest in making such an attempt, as our own Government was neglectful of its duty in intimating that other terms would be proposed, in case of disagreement.

But how did Great Britain meet this proposal, to ascertain the true boundary designated by the treaty? Sir Charles R. Vaughan, in answer to Mr. Livingston, after alluding to the statement that the boundary was to be sought "according to the treaty of peace of 1783," says: "His Majesty's Government regret that they cannot discover, in this proposal, any probable means of arriving at a settlement of this difficult question. It appears to his Majesty's Government to be utterly hopeless to attempt to find out, at this time of day, by means of a new negotiation, an assumed line of boundary which successive negotiators, and commissioners employed on the spot, have, during so many years, failed to discover."

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expected, express its decided opinion that the line could never be ascertained according to the treaty of 1783; but, in relation to the other proposal, that of obtaining power to cede territory to Great Britain, Sir Charles says: "His Majesty's Government will *eagerly* avail themselves of any probable chance of bringing to a satisfactory settlement a question of such vital consequence to the harmony and good understanding between the two Governments; and the undersigned is instructed to lose no time in endeavoring to ascertain from Mr. Livingston, in the *first place*, what is the principle of the plan of boundary which the American Government appear to contemplate as likely to be more convenient to both parties than those hitherto discussed; and, secondly, whether any, and what arrangement, such as Mr. Livingston alludes to, for avoiding the constitutional difficulty, has yet been concluded between the General Government and the State of Maine."

Concerning the subject of jurisdiction, Sir Charles says: "His Majesty's Government entirely concur with that of the United States, in the principle of continuing to abstain, during the progress of the negotiation, from extending the exercise of jurisdiction within the disputed territory beyond the limits within which it has hitherto been usually exercised by the authorities of either party."

Mr. Livingston, in his note above alluded to, in connexion with the subject of agreeing upon a convenient line, intimates that, in such a case, the United States would desire the right of navigation in the St. John's. The British minister rejects this proposition at once. He says: "His Majesty's Government *cannot consent* to embarrass the negotiation respecting the boundary, by mixing up with it a discussion respecting the navigation of the river St. John's as an integral part of the same question." Mr. Livingston, in his note of April 30, 1833, in answer to the portion of Mr. Vaughan's note last cited, says: "As the suggestion, in relation to the navigation of the St. John's, was introduced only in view of its forming a part of the system of compensations in the negotiations for a more convenient boundary, if that of the treaty of 1783 should be abandoned, *is not now insisted on.*"

Again, Mr. Livingston having intimated in his note of the 30th of April, that a line might be drawn from the monument to the highlands, though these highlands should not be found due north from the monument, and the British minister in his note of the 11th of May objecting to this, on the ground that these highlands might be east of the meridian of the St. Croix, and so encroach upon the province of New Brunswick; in his note of the 29th of May, Mr. Livingston says: "The American Government make no pretensions further *east* than that (a due north) line; but if, on a more accurate survey, it should be found that the line mentioned in the treaty should pass each of the highlands therein described, and that they should be found at some *point further west*, then the principles to which I refer would apply, to wit: that the direction of the line to connect the two natural boundaries must be altered, so as to suit their ascertained position."

To make this half way concession the more palatable, the President proposes to add another more perfect, on condition they will accept the first. Mr. McLane, in a letter to Sir Charles Vaughan, under date of March 11, 1834, says: "The President has directed the undersigned to say, that if the proposition he has caused to be made be acceded to by his Majesty's

Government, notwithstanding he does not admit the obligatory effect of the decision, or rather opinion of the arbiter on the point, he is willing to take the stream situated farthest to the northwest, among those which fall into the northernmost of the three lakes, the last of which bears the name of Connecticut lake, as the northwesternmost head of Connecticut river, according to the treaty of 1783."

Here is a direct proposition to cede a portion of territory lying within an independent State. The President affirms that he does not consider the recommendation at all binding, but he is willing to give up the boundary for which our Government has heretofore contended, if the British Government will accede to his other proposition, to seek for the highlands on the west of the St. Croix meridian.

The progress of this negotiation from its commencement in July, 1832, to the close of the year 1834, is truly remarkable. The President is directed by a resolution of the Senate to renew the negotiation for the ascertainment of the boundary according to the treaty of 1783. He does open the negotiation; but in the very first proposition made to the British Government, he assures them that means will undoubtedly be taken to establish a conventional line, if the true line cannot be agreed upon. The British Government assure the President, as might have been expected, that it was in vain to look for the line according to the treaty. Thus, instead of obeying the advice of the Senate, and securing to the United States and to the State of Maine that territory which for more than thirty years had been claimed by our Government, and conceded by Great Britain, the Executive opens the negotiation with an admission in advance that our claim was doubtful, and that he was taking measures which would undoubtedly enable him to yield to them some portion of our territory. What could be expected to result from such negotiation? Such diplomacy argues a total dereliction of duty on the part of the Executive; and merits the decided disapprobation of the American people.

But to keep up appearances, the Executive intimates to the British Government that he desires the free navigation of the river St. John; but when he is told in reply that this cannot be granted, he meekly replies, that it *will not be insisted upon*. The Executive proposes to seek for the highlands without the line described in the treaty of 1783; Great Britain objects to searching for these highlands on the east of the St. Croix meridian, and the Executive assures them that he does not intend to look for them on the east, but designs to search for them on the west; or, in other words, he does not intend to claim any of the British territory, but is willing to yield a part of our own!

And how was this received by Great Britain? Was she willing to close with a proposition which would, in all probability, give her a portion of our territory? No; emboldened by these concessions, she extended her claim still further. She at first was willing to accept the award of the King of the Netherlands; but after our Government had virtually yielded the main point, and by implication had admitted that there were no highlands due north from the monument, north of the St. John's, she assures the Executive that she will not consent to the line recommended by the arbiter, and will yield to nothing but an equal division of the disputed territory. She even turns upon the President, and tells him that *he has no constitutional right to seek for highlands west of a due north line*. Mr. Vaughan, the British envoy, under date of Febru-

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ary 10, 1831, says : " But if this objection (want of constitutional power) is insurmountable, as against the line recommended by the King of the Netherlands, would it not be equally fatal to that suggested by Mr. Livingston, (seeking for highlands on the west of a due north line ?) Because, if the boundary was formed by a line drawn from the head of the St. Croix to highlands found to the westward of the meridian of that spot, that boundary would not be the boundary of the treaty, seeing that the treaty requires the boundary to be run along the meridian of the head of the St. Croix ; and that the State of Maine might object to any deviation from the line of the treaty in a westerly direction, as justly as it could to any deviation from that line in a southerly direction."

And while this negotiation was going on between the United States and Great Britain, the President was carrying on a secret correspondence with agents of the State of Maine, to obtain from them the power of establishing a conventional line, whereby a portion of that State would be ceded to Great Britain. The proposition, as we learn from a letter from the Maine commissioners to Governor Smith, dated January 14, 1833, and recently published, was, " That the Legislature of Maine should provisionally surrender to the United States all claim to jurisdiction and right of soil over the territory lying north of the river St. John, and east of the river St. Francis ; Maine, in such case, and in any event, to be indemnified for any portion of the territory thus provisionally surrendered to the United States, if ultimately lost to the State, by adjoining territory to be acquired ; and so far as that should prove inadequate, at the rate of one million of acres of land in Michigan for the claim to and over the whole territory surrendered ; said lands thus to be appropriated, to be sold by the United States at their expense, and the proceeds to be paid without deduction into the treasury of the State of Maine."

It will be seen by this proposition, and the correspondence connected therewith, and recently published by the Legislature of Maine, that the Executive of the United States was desirous of being clothed with power and authority to cede to Great Britain 2,195,360 acres of land, lying within the territory of Maine, and belonging jointly to that State and this Commonwealth. In fact, a *treaty* (if this term can be applied to a paper without title or date) to that effect, was signed by the high contracting parties—by Edward Livingston, Secretary of State, Louis McLane, Secretary of the Treasury, and Levi Woodbury, Secretary of the Navy, in behalf of the United States ; and by William P. Preble, Ruel Williams, and Nicholas Emery, commissioners of the State of Maine, in her behalf. We have already intimated that this instrument is without date ; but from the correspondence in relation to that subject, it appears that these signatures were affixed to that instrument some time in the summer of 1832. As this document is a curiosity, and but few have been permitted to see it, we append it to this report.

This proposition deserves serious consideration. Whether we view it with reference to the President himself, the United States, or Massachusetts, it assumes an important character. In what attitude does it place the President ? Why, he who was requested by the resolution of the Senate, and who was bound by the constitution to settle this controversy according to the provisions of the treaty of 1783, offers to purchase our peace with Great Britain by a million of acres of Michigan land ! Instead of sustaining our rights, he was disposed to bow submissively to his Britannic Majes-

ty, and then offer a million acres of our western land as the price of his humiliation. This very proposition shows that the Executive was satisfied that our claim to the disputed territory was just, and could not be yielded to Great Britain without violating the constitution. But to avoid this difficulty, to be enabled to cede to Great Britain without an equivalent a large district of country, he assures Maine that, if she will surrender her jurisdiction, she shall be well paid from the national treasury or the public domain.

Resolve this proposition into its elements, and what is it? Why, an act is to be done which is allowed to be unconstitutional, but to remove this difficulty a bargain is to be made with the State of Maine, and the United States is to foot the bill! The President is willing to give to Great Britain more than two millions of acres of eastern land, and then one million of western land is to be offered on the altar of our own degradation! Is this the purpose for which our rich public domain is held? Is it put within the power of the National Government that they might buy our peace with transatlantic monarchs?

But let us look at this subject with reference to ourselves. The State of Massachusetts owns one moiety of the territory in question. But Maine is asked to give it up to the President, that he may yield it to the unjust claim of a foreign power! Should this take place, how is Massachusetts to be remunerated for the loss she sustains? Is any provision to be made for her? None whatever. We think this branch of the subject the more important, because the present Executive of the Union, pledged to "follow in the footsteps of his illustrious predecessor," has renewed this proposition, or something of this character, to the State of Maine, as we learn by a message of Governor Kent, submitted to the Legislature of Maine on the 14th of the present month. This proposition is for a "conventional line" of boundary; and upon it his excellency remarks, "The question now is, as I understand it, whether we shall take the lead in abandoning the treaty, and volunteer propositions for a conventional line."

Will the people of Massachusetts give their assent to propositions of this kind? Are they willing to compromise the honor of the nation, and to put their own rights in jeopardy, only to enable the President to comply with the demand of Great Britain, a demand which, as it appears to us, has no foundation in justice? We think not. We believe that both the interest and the honor of Massachusetts call upon her to adhere to the boundary, as it is described in the treaty of 1783. Your committee feel constrained to say, in the language of the late message of the Governor of Maine, "with a most anxious desire to acquiesce in any feasible scheme of adjustment, or any reasonable proposition for a settlement, I feel constrained to say that I see little to hope, and much to fear, from the proposed departure from the treaty line."

It is true that the Executive, in the correspondence with the British Government, keeps up the appearance of insisting upon the line described in the treaty; but the concessions we have spoken of entirely neutralize all appearances of insisting upon the terms of the treaty of 1783, and emboldened the British Government to say, in 1834, "that to carry the treaty strictly and literally into execution is physically and geographically impossible."

But after these concessions of the President; after pressing upon Great Britain the proposition to seek for the highlands west of the St. Croix

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meridian, if the two nations could not agree upon highlands on that meridian, the President gravely tells both Houses of Congress, in his annual messages of 1834 and 1835, that he has presented to Great Britain a "proposition in accordance with the resolution of the Senate." The resolution of the Senate requested that the negotiation should be opened for the ascertainment of the boundary "*according to the treaty of 1783*," and the main proposition presented and discussed with the British Government, was that to which we have already alluded, viz: to seek for highlands west of the meridian of the St. Croix. Was this complying with the resolution of the Senate? Was it not rather throwing every obstacle in the way of the execution of that treaty? The Senate resolved that the Executive could not cede any portion of the territory of Maine, and on this ground they rejected the award of the arbiter; but did not the Executive, by the proposition in question, depart from the language of the treaty, and attempt a cession of a portion of Maine? It seems so to your committee, and in this opinion the British Government coincide. They assert, as we have already seen, that "a line drawn from the head of the St. Croix to highlands found to the westward of the meridian of that spot, would not be the boundary of the treaty."

It is with extreme mortification that we contemplate this subject. We see, or think we see, that not only the honor of the nation, but the sovereignty of Maine and the interest of Massachusetts totally disregarded. Nothing whatever has been done to bring this controversy to a close. The present Executive of the United States, in his message to Congress, in December, 1837, says: "Of pending questions, the most important is that which exists with the Government of Great Britain, in respect to our northeastern boundary. It is with unfeigned regret that the people of the United States must look back upon the abortive efforts made by the Executive, for a period of more than half a century, to terminate, what no nation should suffer long to remain in dispute, the true line which divides its possessions from those of other powers. It is not to be disguised that, with full confidence, often expressed, in the desire of the British Government to terminate it, *we are apparently as far from its adjustment as we were at the time of signing the treaty of peace in 1783.*"

We do not intend to go into the subject of the encroachments upon the disputed territory by the neighboring provinces of New Brunswick and Lower Canada, in the granting of a railroad and marching of troops across this territory, nor of the imprisonment of a citizen of Maine. We leave these subjects to that injured State, and we are happy to learn that they are considering the subject. But we do feel ourselves called upon to protest solemnly and firmly against these encroachments. We view with dissatisfaction the delay which has already taken place on the subject of this boundary. We regard the claim set up by Great Britain as absurd and preposterous, and an actual infringement of the treaty of 1783; and we cannot reconcile the course she pursues on this subject with her pretensions of a friendly disposition towards this nation. Her pretensions of honor, justice, and magnanimity, are and must be regarded as equivocal, so long as she withholds from us that which is justly our due, that which she has solemnly granted us by treaty stipulations.

Nor can we accord to the Federal Executive the praise of promptitude and decision, or of a faithful discharge of the duties intrusted to him. We feel that we have been injured; that our rights have been disregarded by

those who have sworn to defend and protect them. We have looked to the General Government for wise and efficient measures to bring this protracted controversy to a close; but we have looked in vain. That Government which has boldly asserted our rights, and by active and energetic measures has obtained of France the long-withheld indemnity; which has, at the instance of some of the southern States, driven the defenceless aborigines from their homes and the graves of their fathers; which has been so jealous of national honor on our southwestern frontier as to hazard our peaceful relations with a neighboring republic; that Government, deaf to the entreaty of Massachusetts and Maine, has, by acquiescence, concessions, and a miserable diplomacy, strengthened the claim of a foreign power to six millions of our territory, and has virtually attempted to transfer our soil and our freemen to the jurisdiction of a monarch. And while the Federal Government has been thus remiss in its duty, the Government of the neighboring province of New Brunswick has exercised almost undisturbed jurisdiction over the disputed territory. And while this is permitted by our Government and pursued by her provinces, Great Britain will not be at all anxious to terminate this controversy; and why should she be? She has, at the present time, nearly all the advantages of entire jurisdiction; and she knows, full well, that procrastination will operate in her favor, and she will ultimately be enabled to plead this possession in support of her claim.

The British Government, in all recent negotiation upon this subject, takes it for granted that there are no highlands on the meridian of the head of the St. Croix, near the source of the streams that fall into the St. Lawrence. But of this position there is not one particle of proof. It is true that the British surveyors did not continue the line north to the dividing ridge, and that the surveys made by our own agents were less perfect in this than in some other parts of the line; but from the best information we can obtain, we think there is no doubt but that the highlands, as claimed by the United States, are 2,000 feet above the level of the sea. But if instead of 2,000, they were 200 feet, they would answer the description of the treaty, if they actually divided the rivers which empty themselves into the St. Lawrence from those which flow into the Atlantic ocean.

But it is time that this British assumption was put at rest. The line ought to be run, and the monuments erected. The General Government owes it to this Commonwealth, and especially does she owe it to the State of Maine, to run and establish the line according to the treaty of 1783. Let competent surveyors be employed; let the entire line be run, the elevations taken, and suitable monuments erected. The Federal Government is bound by the constitution to protect her citizens in the enjoyment of their rights, and to support every State in the rightful possession of her territory. In the expression of this sentiment, we are happy to find that we speak the sentiment of Maine herself.

Nor will such a survey, such an exploration of the country, interfere in the least with any treaty engagements. Great Britain, as appears from a report of a committee to the Maine Legislature, on the 9th of the present month, has taken the liberty, without authority from the National or State Government, to march her troops over this very territory. This is a direct violation of the law of nations and of treaty stipulations; but no such objection can be made to running a line to ascertain a treaty boundary with the knowledge, and, if it can be obtained, with the consent and co-operation of the British Government. She could not consistently refuse her co-ope-

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ration, much less could she object to the line being run, without subjecting herself to the imputation that she knows that her claim is unjust.

Let the General Government, then, appoint an agent and surveyors to run the line described in the treaty of 1783. Let the proposition be made to Great Britain to unite with us, and make a thorough and accurate survey of the whole region. If she refuses, let us proceed *ex parte*, and know for a fact what are the elevations throughout the entire line. It is now taken for granted by Great Britain, and has been half conceded by our own Government, that highlands cannot be found due north from the monument, which will answer the terms of the treaty. Let surveys be made, and this point put at rest. The time has arrived when the facts in relation to this subject should be known. The people of Maine and of Massachusetts have waited with much solicitude the final settlement of this controversy. But being now told by the highest authority, that "we are apparently as far from its adjustment as we were at the time of signing the treaty of peace in 1783," we feel called upon to speak out in a firm and manly tone, and to urge, with the spirit of freemen, the final adjustment of this perplexing and vitally important subject.

We call upon the Executive of the nation to press this subject upon the consideration of Great Britain; we call upon Congress, the proper guardian of the people's rights, to adopt such measures as will lead to definitive action upon this subject; we call upon the good people of Maine to raise their voice on a question involving not only their interest, but their sovereignty, their very existence as a State. Believing that the voice of Massachusetts should be heard on a subject thus important,—a subject involving the honor of the nation, and the interest and sovereignty of two independent States, the committee would respectfully recommend the adoption of the accompanying resolutions.

CHARLES HUDSON,  
*For the committee.*

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#### APPENDIX.

The following document is an agreement between the United States and the State of Maine. It was never ratified by the respective Governments; and comes before us without title or date. It was entered into in the summer of 1832.

"The King of the Netherlands, mutually selected as arbiter by the King of the United Kingdom of Great Britain and Ireland, and the President of the United States, and invited to investigate and make a decision upon the points of difference which had arisen under the treaty of Ghent of 1814, in ascertaining that point of the highlands lying due north from the source of the river St. Croix, designated by the treaty of peace of 1783 as the northwest angle of Nova Scotia, and in surveying the boundary line between the dominions of the United States and Great Britain, from the source of the river St. Croix directly north to the above mentioned northwest angle of Nova Scotia; thence along the said highlands, which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic ocean, to the northwesternmost head of Connecticut river, having officially communicated his opinion that it will be suitable to adopt, for boundary between the two States, (qu'il conviendra

d' adopter pour limite des Etats,) a line drawn due north from the source of the river St. Croix to the point where it intersects the middle of the thalweg of the river St. John; thence the middle of the thalweg of that river, ascending, to the point where the river St. Francis empties itself into the river St. John; thence the middle of the thalweg of the river St. Francis, ascending, to the source of its southwesternmost branch, designated on map A by the letter X; thence a line drawn due west to the highlands; thence along the said highlands, which divide those rivers that empty themselves into the river St. Lawrence from those that fall into the Atlantic ocean, to the northwesternmost head of Connecticut river: And the Legislature of the State of Maine having protested, and continuing to protest, against the adoption by the Government of the United States of the line of boundary thus described by the King of the Netherlands, as a dismemberment of her territory, and a violation of her constitutional rights: And the President of the United States having appointed the undersigned Secretaries of the departments of State, of the Treasury, and of the Navy, to meet with such persons as might be appointed by the State of Maine, for the purpose of entering into a provisional agreement as to the quantity and selection of land of the United States, which the State of Maine might be willing to take, and the President would be willing to recommend to Congress to give, for a release on her part of all claim of jurisdiction to, and of her interest in, the land lying north and east of the line so designated as a boundary by the King of the Netherlands: And the Governor of Maine, by virtue of the authority vested in him, having appointed the undersigned, William Pitt Preble, Ruel Williams, and Nicholas Emery, commissioners on the part of said State, to meet and confer with the said Secretaries of State, of the Treasury, and of the Navy, thus authorized as aforesaid, with a view to an amicable understanding and satisfactory arrangement and settlement of all disputes which had arisen, or might arise, in regard to the northeastern boundary of said State and of the United States: And several meetings and conferences having been had at Washington, between the eighteenth day of May and the second day of June, 1832, and the said commissioners, on the part of the State of Maine, having distinctly declared that said State did not withdraw her protest against the adoption of the line designated as a boundary by the King of the Netherlands, but would continue to protest against the same; and that it was the desire of the Legislature and Government of Maine that new negotiations should be opened, for the purpose of having the line designated by the treaty of peace of 1783 run and marked according to that treaty; and, if that should be found impracticable, for the establishment of such a new boundary between the dominions of the United States and Great Britain as should be mutually convenient: Maine, in such case, to be indemnified, so far as practicable, for jurisdiction and territory lost in consequence of any such new boundary, by jurisdictional and other rights to be acquired by the United States over adjacent territory, and transferred to said State: And for these purposes, the undersigned commissioners were ready to enter into a provisional agreement, to release to the United States the right and claim of Maine to jurisdiction over the territory lying north and east of the line designated by the arbiter, and her interest in the same, the said State of Maine and the State of Massachusetts being owners of the land in equal shares; suggesting at the same time the propriety of suspending the conferences until the Senate of the United States, whose

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advice it had become the duty of the President to take, and before whom his message for that purpose was then under consideration, should finally act in the matter, in which suggestion the Secretaries of State, of the Treasury, and of the Navy, concurred. And the Senate of the United States did, on the twenty-third day of June, 1832, pass a resolution in the words following :

*Resolved*, That the Senate advise the President to open a new negotiation with his Britannic Majesty's Government, for the ascertainment of the boundary between the possessions of the United States and those of Great Britain on the northeast frontier of the United States, according to the treaty of peace, of 1783.

Whereupon, the Secretaries of State, of the Treasury, and of the Navy, did renew their communications with the commissioners on the part of the State of Maine, and state it to be the wish and intention of the President to open a negotiation with the Government of Great Britain for the purposes mentioned by the said commissioners, and also for making arrangements relative to the navigation of the river St. John, and the adjustment of other points that may be necessary for the convenience of the parties interested ; but deeming a cession from the State of Maine of all her jurisdiction and right of soil over the territory heretofore described, and in the manner heretofore stated, as indispensable to the success of such negotiation, the Secretaries of State, of the Treasury, and of the Navy, did declare and propose, that, in consideration of such cession, the President will, as soon as the state of the negotiation with Great Britain may render it proper to do so, recommend to Congress to grant to the State of Maine an indemnity for the release, on her part, of all right and claim to jurisdiction over, and her interest in, the territory beyond the line so designated by the King of the Netherlands. The said indemnity to consist of one million acres of land, to be selected by the State of Maine, and located in a square form, as near as may be, out of the unappropriated lands of the United States, within the Territory of Michigan ; the said lands to be surveyed and sold by the United States, at their expense, in the same manner and under the same regulations which apply to the public lands ; and the whole proceeds, without deduction, to be paid over to the State of Maine as they shall be received. But if, in the result of any negotiation, as aforesaid, with Great Britain, the State of Maine shall ultimately lose less of the territory claimed by her north and east of the rivers St. John and St. Francis than she would according to the line designated by the King of the Netherlands, the aforesaid indemnity shall be proportionate to the actual loss ; and if any new territory, contiguous to the State of Maine, not now within her limits, shall be acquired by such negotiation from Great Britain, the same shall be annexed to, and be made a part of, said State ; and a farther proportionate deduction shall be made from the indemnity above mentioned. But if such attempts on the part of the President to negotiate should wholly fail, and in that case, and not otherwise, the proper authority of the United States should, on full consideration, determine to acquiesce in the line designated by the King of the Netherlands, and to establish the same as the northeast boundary of the United States, the State shall be entitled to receive the proceeds of the said million of acres, without any abatement or deduction—which offer the undersigned commissioners provisionally accede to, and on condition of the due performance of all and singular the things which by the declarations of the Secretaries of State, of the Treasury, and of the Navy,

and by the proposal aforementioned, are to be performed or intended to be performed, they agree to recommend to the Legislature of the State of Maine to accept said indemnity, and to release and assign to the United States all right and claim to jurisdiction, and all her interest in the territory north and east of the line designated by the King of the Netherlands. But it is distinctly understood, that until this agreement shall have been accepted and ratified by the Legislature of Maine, nothing herein shall, in any wise, be construed as derogating from the claim and pretensions of the said State to the whole extent of her territory, as asserted by her Legislature. Nor shall anything herein contained be construed so as to express or imply, on the part of the President, any opinion whatever on the question of the validity of the decision of the King of the Netherlands, or of the obligation or expediency of carrying the same into effect.

EDWARD LIVINGSTON,  
LOUIS M'LANE,  
LEVI WOODBURY,  
WM. P. PREBLE,  
RUEL WILLIAMS,  
NICHOLAS EMERY."

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### COMMONWEALTH OF MASSACHUSETTS.

IN THE YEAR ONE THOUSAND EIGHT HUNDRED AND THIRTY-EIGHT.

*Resolves concerning the northeastern boundary.*

*Resolved,* That the claim of Great Britain to all the territory in the State of Maine, lying north of Mars Hill and the tributary waters of the Penobscot, is totally inconsistent with the treaty of peace of seventeen hundred and eighty-three, and will, if persisted in, inevitably tend to disturb the friendly relations now subsisting between that Government and the Government of the United States.

*Resolved,* That no power delegated by the constitution to the Government of the United States authorizes them to cede to a foreign nation any territory lying within the limits of either of the States in the Union.

*Resolved,* That the proposition made by the late Executive of the United States to the British Government, to seek for "the highlands" west of the meridian of the source of the river St. Croix, is a departure from the express language of the treaty of peace, an infringement of the rights of Massachusetts and Maine, and, as its consummation involves a cession of State territory, is in derogation of the constitution of the United States.

*Resolved,* That the proposition recently made by the present national Executive to the Government of Maine to substitute a "conventional line" for the line described in the treaty, is calculated to strengthen the claim of Great Britain, impair the honor of the United States, and put in jeopardy the interest of Massachusetts and Maine.

*Resolved,* That Congress be requested to cause the northeastern section of Maine to be speedily explored, and the boundary line, described in the treaty, to be established.

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*Resolved*, That his excellency the Governor be requested to transmit a copy of these resolves, and the accompanying report, to the Executive of the United States, and of the several States ; and also to each of our Senators and Representatives in Congress, with a request that they use all honorable means to bring this protracted controversy to a just and speedy termination.

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